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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,671	09/08/2003	Mark F. Cotton	12587-046001 / D03-047/01	2189
26212 7590 12/12/2008 FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER POND, ROBERT M	
			ART UNIT 3625	PAPER NUMBER
			NOTIFICATION DATE 12/12/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary	Application No. 10/658,671	Applicant(s) COTTON ET AL.	
	Examiner Robert M. Pond	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,7-13,15,19-21 and 26-38 is/are pending in the application.
- 4a) Of the above claim(s) 26-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,7-13,15,19-21 and 38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Applicants amended claims 1, 7, 8, 9 and 19, newly added claims 26-38 and canceled claims 2-6, 14, 16-18 and 22-25. All pending claims not withdrawn 1, 7-13, 15, 19-21 and 38 were examined in this final office action necessitated by amendment.

Response to Arguments

Applicant's arguments, see Remarks, filed 04 August 2008, with respect to the rejection(s) of claim(s) 1, 7-13, 15 and 19-21 under 35 USC 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Nowers in view of Albright further in view of Ettl as necessitated by amendment. Nowers is no longer the sole prior art reference thereby rendering subsequent arguments moot.

Elections/Restrictions

Claim 1 is generic to the following newly added disclosed patentably distinct species: 26-27; 28; 29; 30; 31; 32; 33; 34; 35; 36; and 37. The species are independent or distinct because as disclosed the different species have mutually exclusive characteristics for each identified species. In addition, these species

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are not obvious variants of each other based on the current record. Since Applicants received an action on the merits for the originally presented species of generic claim 1, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 26-37 are withdrawn from consideration as being directed to a non-elected species. See 37 CFR 1.142(b) and MPEP § 821.03.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1, 7-12, 15, 19-21 and 38 are rejected under 35 USC 103(a) as being unpatentable over Nowers (US 2003/0033205) in view of Albright (US 2002/0099678) further in view of Ettl (US 5,946,662).

Nowers teaches a system operated by a third-party (i.e. connection provider) that facilitates interaction between online Internet retailers/web merchants/e-tailers and vendors (i.e. B2B) in support of business-to-consumer (B2C) commerce by the system between the retailers/web merchants/e-tailers and online consumers. See at least abstract; 0072-0077. Nowers further teaches:

- Regarding claim 1. receiving at a connection provider computer system from a seller's computer system, information describing one or more items for sale by the seller; vendors register with the system and submit information describing product to be sold by one or more Internet retailers/web merchants/e-tailers. See at least 0072-0074.
- Regarding claim 1. Nowers teaches all the above as noted under the 103(a) rejection and further teaches i) a sales and inventory distribution strategy by participating retailing partners (see at least 0208) and ii) sellers listing their products in an inventory database (see at least 0089). Although Nowers does not mention developing, using the connection provider computer system and based on the information describing the one or more items for sale by the seller, a pricing and listing strategy for selling the one or more items on one or more online sales channels selected, from among multiple potential online sales channels, as being

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appropriate for selling the one or more items, Albright on the other hand teaches a pricing modeling tool used to develop supply chain channel pricing strategies and make recommendations for web commerce channel(s), brick-and-mortar channel(s) and vendors. See at least abstract; 0003; 0004; 0009; 0020; 0022; 0032; 0042. One of ordinary skill in the art at time the invention was made would have recognized that applying the known techniques of Albright of modeling and suggesting channel pricing strategies would have yielded predictable results and resulted in an improved system. It would have been recognized that applying the known techniques of Albright to the teachings of Nowers would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applied shows the ability to incorporate such data processing features into similar systems. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. v. Teleflex Inc.*

Nowers and Albright further teach and suggest:

- Regarding claim 1. facilitating using the connection provider computer system, a sale of the one or more items through one or more online sales channels based on the pricing and listing strategy; Internet retailers/web merchants/e-tailers sales channels. Nowers: see at least 0002; 0005; 0007; 0010; 0044.

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- Regarding claim 1. Nowers and Albright teach and suggest all the above as noted under the 103(a) rejection and teach and suggest i) modeling pricing strategies for various sales channels in a supply chain and ii) analyzing inventory levels from among multiple distribution centers in a supply chain (Albright: see at least 0022). Although Nowers and Albright do not mention using the connection provider computer system to select, from among multiple potential fulfillment centers based on the information describing the one or more items for sale by the seller, one or more fulfillment centers tailored to fulfilling orders of items having properties in common with the one or more items. Ettl on the other hand teaches a method of providing inventory optimization for levels of products in a complex supply chain network for multiple internal supplier or manufacturer locations and external distributor or retailer locations. Ettl teaches modeling product (common characteristics) flow within the complex supply chain network and further teaches predictive modeling used to assess inventory levels at multiple stocking locations. See at least abstract; col. 2, line 29-col. 3, line 10. One of ordinary skill in the art at time the invention was made would have recognized that applying the known techniques of Ettl modeling inventory levels of product with common characteristics among distribution centers would have yielded predictable results and resulted in an improved system. It would have been recognized that

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applying the known techniques of Ettle to the teachings of Nowers and Albright would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applied shows the ability to incorporate such data processing features into similar systems. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. v. Teleflex Inc.*

Nowers, Albright and Ettl further teach and suggest:

- Regarding claim 1. and facilitating using the connection provider computer system, fulfillment of sold items through one or more selected fulfillment centers tailored to fulfilling orders of items having properties in common with the one or more items the sold items. Ettl as noted above.
- Regarding claim 7. operating the fulfillment center with respect to the sold items according to one or more parameters tailored to the sold items comprises tailoring storage or handling characteristics of the fulfillment center to the type of items sold. System serves as a returns center and enters information pertaining to reworked customer returns. Note: Implies third-party operator is authorized to handle rework. See at least 0113; 0116; 0112.
- Regarding claim 8. operation of the fulfillment center with respect to the sold items according to one or more parameters tailored to the sold items comprises (i) performing preparation activities in connection with

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fulfilling orders for the items split shipping authorized by retailer or permitting backordering. See at least 0098. and (ii) tailoring storage or handling characteristics of the fulfillment center to the type of items sold. System serves as a returns center and enters information pertaining to reworked customer returns. Note: Implies third-party operator is authorized to handle rework. See at least 0113; 0116; 0112.

- Regarding claim 9. operation of the fulfillment center with respect to the sold items according to one or more parameters tailored to the sold items comprises an activity other than (i) performing preparation activities in connection with fulfilling orders for the items or (ii) tailoring storage or handling characteristics of the fulfillment center to the type of items sold. Inventory replenishment requests. See at least 0092;
- Regarding claim 10. the connection provider comprises a non-title-taking intermediary that coordinates fulfillment of the sold items. consignment inventory. See at least 0044; 0073; 0089.
- Regarding claim 11. facilitating a sale of the items includes providing customer service on behalf of one or more sellers. customer CSR (i.e. customer service rep); communicating with customer. See at least 0192.
- Regarding claim 12. The method of claim 11 wherein facilitating a sale of the items further comprises: providing billing services and providing

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collection services.; bills customers and settles with vendors and Internet retailers; invoicing retailer for additional charges. See at least 0171; 017; 0204. Note: instant specification does not provide specificity as to type of collection services. Nowers collects payments.

- Regarding claim 15. The method of claim 11 wherein facilitating a sale of the items further comprises: developing a selling strategy for the items being sold; strategy- products from multiple vendors arrive in a single shipment from a common pooled inventory repository. Benefits- cost to customer for multiple shipments are eliminated and customers only need to send returns to a single location. See at least 0048. managing orders and transportation of the items being sold; and managing inventory for the items being sold. See at least 0089; 0093; 0098; 0099.
- Regarding claims 19-21 and 38. Rejections are based on the teachings and suggestions as noted above.

2. Claim 13 is rejected under 35 USC 103(a) as being unpatentable over Nowers (US 2003/0033205), Albright (US 2002/0099678) and Ettl (US 5,946,662) as applied to claim 12, further in view of Amazon (PTO-892, Item: V).

Nowers, Albright and Ettl teach and suggest all the above as noted under the 103(a) rejection and teach and suggest facilitating sales by i) providing listing

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tools; vendors use the system to list products available for resale by Internet retailers and Internet retailers use the system to list vendor products to sell via the system and ii) monitoring a progress of the selling performance of the items (Nowers: see at least 0001; 0021; 0027; 0047; 0077; 0096) and further teach and Suggest Amazon.com as a sales channel. Although Nowers does not mention providing online auction capabilities, Amazon on the other hand teaches Amazon.com helping online sellers become effective marketers using its online auction services. U: see at least pages 1 and 2. One of ordinary skill in the art at time the invention was made would have recognized that applying the known techniques of Amazon to provide online auction capabilities would have yielded predictable results and resulted in an improved system. It would have been recognized that applying the known techniques of Amazon to the teachings of Nowers, Albright and Ettl would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applied shows the ability to incorporate such data processing features into similar systems. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. v. Teleflex Inc.*

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 571-272-6760. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR

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only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert M. Pond/
Primary Examiner, Art Unit 3625
December 8, 2008